

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 130 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and

MR.JUSTICE A.R.DAVE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

COMMISSIONER OF INCOME-TAX

Versus

KAILASH OIL CAKE INDUSTRIES

Appearance:

MR BB NAIK with MR MANISH R BHATT for Petitioner
MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE
Date of decision: 22/01/98

ORAL JUDGEMENT : [Per : R.K. Abichandani, J.]

1. The following question has been referred to this court for its opinion under Section 256(1) of the Income Tax Act, 1961, by the Income Tax Appellate Tribunal,

Ahmedabad.

"Whether, the Appellate Tribunal is right in law and on facts in holding that for the purpose of investment allowance and depreciation the amount of subsidy received by the assessee was not to be deducted for the purpose of arriving at the cost of assets?"

3. The Tribunal relying upon the decision of this Court in CIT v. GRACE PAPER INDUSTRIES PVT. LIMITED, 183 ITR 591 dismissed the Appeal of the Revenue upholding the order of the CIT(A) holding that the amount of subsidy cannot be deducted from the cost of assets under Section 43(1) of the said Act.

4. In Grace Paper Industries Pvt. Ltd. (Supra), this Court came to the conclusion that the subsidy did not form part of the actual cost of plant and machinery within the meaning of Section 43 of the Act and, therefore, it cannot be deducted from the cost of assets in computing depreciation, development rebate and investment allowance.

5. The question whether Central subsidy should not be deducted from the actual cost of assets for the purpose of allowing depreciation in context of Section 43 of the said Act came up for consideration of the Supreme Court in CIT v. PJ CHEMICALS LTD., reported in 210 ITR 830. The Supreme Court after reviewing the case law found itself in agreement with the view taken by majority of the High Courts including the view taken by this Court in Grace Paper's case (supra), which was specifically referred to by the Supreme Court. It was held by the Supreme Court that it would not be unreasonable to say that the government's subsidy is an incentive not for the specific purpose of meeting a portion of the cost of the assets, though quantified as or geared to a percentage of such cost. It was held that, if that be so, it does not partake of the character of a payment intended either directly or indirectly to meet the "actual cost".

6. In view of the above settled legal position, we are of the opinion that the Appellate Tribunal was right in holding that for the purpose of investment allowance and depreciation the amount of subsidy received by the assessee was not to be deducted for the purpose of

arriving at the cost of assets. The question referred to us is therefore answered in the affirmative against the Revenue and in favour of the assessee. The Reference stands disposed of accordingly with no order as to costs.

p.n. nair